

SERVED: March 11, 1999

NTSB Order No. EA-4749

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 5th day of March, 1999

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Dockets SE-15104 and
	)	SE-15103
	)	
THOMAS CRISSEY and	)	
SIEGFRIED PITTET,	)	
	)	
Respondents.	)	
_____	)	

**OPINION AND ORDER**

Respondents, through separate counsel, appeal the initial decision of Administrative Law Judge William R. Mullins, rendered at the conclusion of an evidentiary hearing held on April 28, 1998.<sup>1</sup> By that decision, the law judge affirmed the Administrator's complaint by finding that respondents each

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<sup>1</sup> An excerpt from the hearing transcript containing the law judge's initial decision is attached.

violated sections 91.7(a) and 91.13(a) of the Federal Aviation Regulations ("FARs").<sup>2</sup> The Administrator's complaints originally sought to suspend respondents' airline transport pilot ("ATP") certificates for 30 days, but at the hearing she waived sanction because respondents filed qualifying Aviation Safety Reporting System reports.

On April 3, 1997, Trans States Airlines ("TSA") mechanics replaced the right engine of N564HK, a British Aerospace Jetstream 41 operated for Trans World Express ("TWE") by TSA. Later that day, respondent Pittet served as first officer aboard TWE Flight 7318 from St. Louis, Missouri ("STL") to Bloomington, Illinois ("BMI"). The aircraft remained at BMI overnight, and respondent Crissey served as first officer aboard TWE Flight 7323 back to STL the following morning. As TWE Flight 7323 pulled up to the gate at STL, John Klay, FAA Assistant Principal Operations Inspector for TSA, began an external inspection of N564HK. Mr.

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<sup>2</sup> FAR §§ 91.7 and 91.13 (14 C.F.R. Part 91) provide, in relevant part, as follows:

**§ 91.7 Civil aircraft airworthiness.**

(a) No person may operate a civil aircraft unless it is in an airworthy condition.

\* \* \* \* \*

**§ 91.13 Careless or reckless operation.**

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

\* \* \* \* \*

Klay discovered that all 18 screws were missing on the right engine's lower, forward cowling, and this enforcement action followed.<sup>3</sup>

At the hearing, the Administrator proved that TWE Flights 7318 and 7323 were the first two flights of N564HK after the right engine was replaced -- a process which requires removal of the lower, forward engine cowling -- and argued that respondents each performed an inadequate preflight inspection in not discovering that mechanics had failed to reinstall the cowling screws after replacing the engine.<sup>4</sup> In support of her case, the Administrator presented expert testimony indicating respondents, as first officers, are directly responsible for inspecting the powerplants, including associated cowling, prior to flight, that the missing screws should have been noticed during the preflight inspections, and that with all 18 screws missing from the lower cowling, the aircraft was not airworthy.<sup>5</sup>

Respondents both testified that they observed the screws in

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<sup>3</sup> The Administrator also brought charges against the captains who flew with respondents and the mechanics who were involved in this incident.

<sup>4</sup> The missing screws were designed to fasten the aft end of the forward cowl to the aircraft structure. In addition to the missing screws, the cowl is secured by bolts not externally visible. On the incident airplane, the internal bolts were later found to be in place.

<sup>5</sup> The missing screws were supposed to be arrayed in a "U" pattern along both sides of the aft edge of the forward, lower cowling, as well as across the bottom of the lower aft edge, and the sides of this cowling are slightly below eye-level for a pilot of average height.

place during their preflight inspections, but they offered little else to counter the Administrator's evidence. <sup>6</sup> The law judge concluded that the preponderance of the evidence supported the Administrator's allegations, and, notwithstanding the general disagreement with the law judge's findings raised in this appeal, we see no basis to disturb his factual findings. <sup>7</sup>

Turning to the legal arguments raised on appeal, respondents contend that the Administrator presented insufficient evidence of the section 91.13(a) violation because she didn't demonstrate that operation of the aircraft with the cowling screws missing endangered life or property. <sup>8</sup> Respondents misconstrue the

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<sup>6</sup> Indeed, although respondents both argued that the missing screws could have fallen out during flight, and respondent Pittet hypothesized that this could have been the result of mechanics using undersized screws, respondents provide little support for this theory. Each testified that during their preflight inspections they observed the screws to be flush with the cowling surface and normal in appearance. Moreover, after the screws were installed after Mr. Klay discovered them to be missing, he checked them 4 flight hours later and found none of them to be loose or missing. Similarly, respondent Pittet offered no support for his alternative theory that someone tampered with the aircraft while it was parked overnight at BMI.

<sup>7</sup> The preponderance of the evidence indicates that the missing screws were overlooked by the mechanics when they replaced the engine and subsequently reinstalled the forward, lower cowling. In this regard, the law judge clearly made an implicit credibility finding against respondents' claim to have observed the missing screws during their preflight inspections. Absent extraordinary circumstances, we defer to the credibility determinations made by our law judges. See, e.g., Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (including cases cited therein).

<sup>8</sup> Respondent Crissey also argues that there was insufficient proof that the aircraft was unairworthy. The record, however, contains the testimony of Mr. Adam Novak, the FAA's Assistant Principal Maintenance Inspector for TSA, that the aircraft was  
(continued . . .)

applicable standard. See, e.g., Administrator v. Erickson and Nehez, NTSB Order No. EA-3869 at 4-5 (1993) ("it is a well-established proposition that evidence of potential endangerment to life or property is sufficient to establish a violation of section [91.13(a)]) (citations omitted). We have no doubt that respondents' failure to notice that all 18 screws were missing is evidence of a careless preflight inspection, and, clearly, inadequate preflight inspections create potential endangerment to passengers and property when the aircraft is subsequently operated.<sup>9</sup>

Finally, respondents attack the law judge's inquiries about the settlement of cases brought by the Administrator against mechanics involved in this incident. At issue are written statements by these mechanics which respondents relied on to demonstrate that the mechanics had, in fact, installed the screws that were subsequently found to be missing. Those statements, made at a time when the mechanics themselves were facing certificate action, were unsworn and obviously self-serving, but respondents nonetheless rely on them for the proposition that respondents performed adequate preflight inspections because the

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(continued . . .)

not airworthy with all 18 cowling screws missing. Two other witnesses corroborated Mr. Novak's assertion that the aircraft was not airworthy.

<sup>9</sup> The record also indicates that the missing screws would allow the cowling to flutter and that, eventually, this would cause cracking.

screws were, as they claimed, installed at the time they performed their respective preflight inspections. Obviously, the law judge needed to weigh the evidentiary value of those statements. The law judge properly considered factors such as the statements' unsworn, hearsay nature, as well as the fact that they were given when the mechanics themselves were facing certificate action, in ultimately, and, we think, properly, assigning them a relatively low weight. However, it was error for the law judge to remark that the mechanics "admitted, at least by way of their settlement, that there was a problem." Without more information about the settlement, such as, for instance, whether or not it contained a clause professing no admission of liability, the law judge's apparent inference was invalid. Nonetheless, we think this error was harmless, for the record, without reference to the fact that the mechanics settled their cases, amply supports the Administrator's charges. <sup>10</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondents' appeals are denied; and
2. The law judge's initial decision is affirmed.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>10</sup> Respondents argue that the law judge violated the policies embodied in Federal Rule of Evidence ("FRE") 408 which prohibits evidence of agreeing to a settlement for, among other things, "prov[ing] liability for . . . the claim." Although we have applied the principles of FRE 408 to our proceedings when a respondent participated in the settlement negotiations, we need not address the applicability of FRE 408 here.